

Remarks

This case has been carefully reviewed in light of the Office Action wherein: the abstract is objected to as being informal; claims 1, 2, 4-8, 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Piesker (U.S. Patent 2, 979, 089); claims 3 and 9 are rejected under 35 U.S.C. 103(a) in view of Piesker and examiner's Official Notice; claims 13-17 are rejected under 35 U.S.C. 103(a) in view of Piesker and Applicant's admitted prior art (AAPA), and, for claim 15, in view of examiner's Official Notice. In this amendment, the abstract has been amended as described below; claims 1, 8, and 15 have been amended as described below; and claims 4, 5, 10, and 11 have been canceled. No new matter has been added. Claims 1-3, 6-9, and 12-19 are pending in this application. Reconsideration in light of the following remarks is respectfully requested.

Regarding the objection to the abstract, the Office Action recites, in pertinent part (original emphasis), “The form and legal phraseology often used in patent claims, such as ‘means’ and ‘said’ should be avoided.” Consequently, Applicant has amended the abstract by changing all occurrences of “said” to “the,” and by eliminating all occurrences of “adapted.”

Regarding the rejection of claims 1, 2, 4-8, 10-12 under 35 U.S.C. 102(b) as being anticipated by Piesker, particularly with respect to claim 5, the Office Action identifies a correspondence between Applicant's claim 5 recitation, “. . . said motor is spring operated,” and Piesker's “coil spring” (20) (col. 3, line 29). Applicant respectfully traverses the rejection of claim 5 on the grounds that whereas Applicant's paragraph [0013] recites, in pertinent part: “In another more detailed embodiment . . . motor 120 is spring operated. In such embodiments, the wearer stores energy in apparatus 100 by first winding up motor 120,” Piesker's coil spring (20) is incapable of storing the energy required to operate the apparatus. The correspondence being erroneous, Applicant respectfully submits claim 5 is therefore not anticipated by Piesker and respectfully requests the rejection be withdrawn. Consequently, Applicant has amended independent claim 1 to incorporate all the limitations of claim 5, and canceled claims 4 and 5 which

would otherwise conflict with claim 1 as amended. Applicant respectfully requests, therefore, that the rejections of independent claim 1 and of claims 2, 3, 6, and 7 depending therefrom be withdrawn.

Similarly, Applicant has amended independent claim 8 to incorporate the limitations of “being spring operated,” thereby rendering claim 8 distinct from Piesker, and of further comprising a clutch, thereby rendering claim 8 distinct from claim 2. Applicant respectfully requests, therefore, that the rejections of independent claim 8 and of claims 9 and 12 depending therefrom be withdrawn. Claims 10 and 11 have been canceled to avoid conflict with claim 8 as amended.

Regarding the rejection of claims 13-17 under 35 U.S.C. 103(a) in view of Piesker and Applicant’s admitted prior art (AAPA), MPEP section 2143.01 recites:

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

Applicant respectfully submits that as the term “earring” does not appear anywhere in Piesker, and the term “motor” does not appear anywhere in the AAPA, there is neither a teaching, suggestion, nor motivation to combine the references either explicitly or implicitly in the references. Further, the present lack of commercially available products implementing the method of claim 13 indicates no such teaching, suggestion, or motivation is found in the knowledge generally available to one of ordinary skill in the art. Applicant respectfully submits, therefore, that claim 13 is not obvious in view of the applied references and respectfully requests the rejections of independent claim 13 and of claims 14-19 depending therefrom be withdrawn.

Applicant has amended claim 15, substituting “method” for “apparatus,” to correct a clerical error in the original claim.

Concluding Comments

In view of the foregoing, Applicant respectfully submits that the application, particularly as amended, is in condition for allowance. Favorable reconsideration and prompt allowance of the application are respectfully requested.

This Amendment being submitted in the third month following the expiration of the shortened statutory period for reply, Applicant respectfully requests an extension of time and encloses a check for the small entity fee in the amount of \$510.00.

Respectfully submitted,



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